

REMARKS

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 are pending in the application.

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 stand rejected.

Claims 1-2, 14, 17-18 and 30 have been amended to further clarify the subject matter recited therein without adding any new subject matter to the instant specification.

Rejection of Claims under 35 U.S.C. §103

Claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sultan, U.S. Patent No. 6,804,657 (Sultan) and Gozdeck, et al., U.S. Patent No. 6,636,852 (Gozdeck). Applicants respectfully traverse the obviousness rejections of claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32 and 34-37 in view of the following remarks and present claim amendments.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See* MPEP 2141.02 (2007), *citing Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); and *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

To establish a *prima facie* case of obviousness, MPEP §2142 requires:

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. (Emphases added.)

Applicants assert that the Examiner has failed to establish a *prima facie* case of obviousness with respect to the claims in the instant application. As discussed hereinbelow, neither Sultan nor Gozdeck, either alone or in combination, teaches or suggests all the claim limitations recited in the amended independent claims 1, 14, 17, and 30. Furthermore, as discussed below, the Official notice of automatic forecast generation and reliance on Martin (US Patent Application Publication No. US 2002/0107720) in support thereof also fails to supply the deficiency in the combined teachings of Sultan and Gozdeck.

A discussion of Sultan was provided in Applicants' response to immediately previous Office Action of July 18, 2007, and, hence, is not repeated herein for the sake of brevity.

Gozdeck relates to a computer-implemented method for computing the compensation for sales agents within a corporate sales force. Compensation plans for the sales agents are stored in a database. The sales agents may then input past sales into the database and may input, qualify, modify and/or store future sales opportunities into the database. The past sales and future sales opportunities may then be applied to one or more of the stored compensation plans to calculate the sales agents' compensation. Quota achievement levels may be graphically or textually displayed for the sales agents. (Gozdeck, Abstract.)

Applicants assert that neither Sultan nor Gozdeck, either alone or in combination, teaches or suggests all the claim limitations in the amended independent claim 1, which recites a method for generating forecast information corresponding to an organization, wherein the method comprises, in relevant part, “creating a forecast series comprising a set of parameters that define attributes of forecasts that are based thereon; identifying opportunity data corresponding to members of the organization...associated with positions in a hierarchy structure...[that] comprises a plurality of management levels; associating revenue data with identified opportunity data to create at least one revenue schedule containing a plurality of entries; providing a plurality of visual adjustment patterns in graphical shapes displaying a corresponding plurality of adjustment values, wherein selection of a visual adjustment pattern by a member of the organization results in an automatic application of the corresponding adjustment value to a member-selected entry in a revenue schedule in a manner depicted by a shape of the selected visual adjustment pattern...;and generating a forecast for...[a] first member of the organization using the set of parameters in the forecast series and based on a forecast submitted by...at least one subordinate member who is required to provide corresponding subordinate member-level forecast to said first member...wherein a forecast for said at least one subordinate member is automatically generated when said at least one subordinate member fails to submit a forecast prior to generation of the forecast for the first member.” (Emphases added.)

The present claim amendments find support throughout the specification of the instant application. For example, the visual adjustment patterns and application of corresponding adjustment values are discussed with reference to discussion of Figures 18A-18D. The automatic forecast generation aspect is discussed, for example, on pages 19-20 in the specification of the instant application.

Applicants assert that none of the cited references—Sultan or Gozdeck—teaches or reasonably suggests, either alone or in combination, all the claim limitations recited in the amended independent claim 1. Gozdeck has been primarily cited to remedy Sultan’s failure to disclose automatic application of an adjustment value to a revenue schedule using a visual adjustment pattern. (*See*, present Office Action, pages 5-6.)

However, Applicants assert that Examiner’s reading of Gozdeck is inaccurate. The portions of Gozdeck cited in the Office Action (e.g., column 6, lines 50-53, and column 8, lines 11-25 in Gozdeck) fail to teach automatic application of an adjustment value to a member-selected entry in a revenue schedule in a manner depicted by a graphical shape of the selected visual adjustment pattern as recited in the amended independent claim 1 and discussed in more detail with reference to discussion of Fig. 18C in the instant application. Gozdeck not only fails to teach such automatic application aspect, but also fails to even remotely suggest such automatic application. On the contrary, Gozdeck’s teaching is limited to mere display of a sales agent’s quota achievement level as can be seen from Fig. 3 in Gozdeck and corresponding discussion in columns 7 and 8 in Gozdeck. The act of displaying a bar graph in Fig. 3 in Gozdeck is not even remotely close to the act of applying a graphical shape based visual adjustment pattern depicted in Fig. 18C in the instant application in the manner recited in the amended independent claim 1.

Applicants further assert that automatic generation of a forecast for a subordinate member—who is required to submit its member-level forecast to a superior member in the hierarchical management structure as recited in the amended independent claim 1—is also neither taught nor fairly suggested by the combination of Sultan and Gozdeck. The Office Action acknowledges Sultan’s failure to teach such automatic forecast generation aspect. (*See*, present Office Action, page 14.) In an attempt to find a “solution” to remedy Sultan’s deficiency, the

Office Action apparently takes recourse to Official notice and cites Martin in support for the proposition that the automatic forecast generation aspect is “old and well known.” Without acceding to the purported reasoning in support of the “Official notice” thus taken, Applicants assert that such Examiner’s Official notice fails to consider the context in which the automatic forecast generation is claimed in the amended independent claim 1. The independent claim 1 does not recite automatic forecast generation in a vacuum, but rather in the context of a hierarchical management structure in which a subordinate member, who is required to provide corresponding member-level forecast to a member at a superior management level in the hierarchical structure, fails to submit his/her forecast prior to generation of the forecast for the superior member.

MPEP §2144.03 requires that, “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” (Emphasis added.) Applicants assert that Examiner’s blanket and non-contextual assertion of “old and well known” status of automatic forecast generation aspect in the Official notice is contrary to the requirements in the MPEP. The Official notice of automatic forecast generation in a context-less manner renders the propriety of the Official notice questionable under MPEP §2144.03, which further requires that, “[A]ny facts so noticed should be of notorious character and serve only to ‘fill in the gaps’ in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.”

As pointed out in the Applicants' response to the immediately previous Office Action of July 18, 2007, there is no teaching or suggestion of automatic forecast generation in the primary reference of Sultan. Furthermore, Sultan is silent about what happens when a subordinate member in the hierarchical organizational structure in Sultan fails to submit pipeline data prior to generation of forecast sales information by the subordinate's superior. In view of Sultan's failure to even recognize the issue of a missing forecast submission, and the absence in Sultan of any indication or suggestion—even a hypothetical one—of the problem of a missing forecast submission in the context of a forecasting process carried out within a hierarchical organizational structure, Applicants assert that there is no motivation to combine the teachings of Sultan with Martin or any similar reference in the art and there is also no reasonable expectation of success. In this regard, the Office Action's *sua sponte* recognition of a non-existent "problem" in Sultan and solicitation of the "solution" in Martin is against the requirements of MPEP § 2143, and leads to a need for a hindsight in order to make such a cognitive leap.

Applicants wish to note MPEP §2143, which requires that "combining known prior art elements is not sufficient to render the claimed invention obvious if the results would not have been predictable to one of ordinary skill in the art." *Citing, United States v. Adams*, 383 U.S. 39, 51-52, 148 USPQ 479, 483-84 (1966). The discussion in Martin is related to non-hierarchical forecasting of guest demands of an amusement park. In other words, Martin is not even remotely related to a forecasting process carried out by members having hierarchical positions within an organization and where a subordinate member is required to provide his/her member-level forecast to a member of superior management level in the hierarchy as required by the amended independent method claim 1. Guests of an amusement park are hardly required to provide forecast of their usage of the amusement park facilities. Furthermore, it is simply absurd to

conceive of hierarchical distinctions among guests within a guest community utilizing an amusement park. Thus, assuming *arguendo* that combination of Sultan and Martin is proper, the use of automatic forecasting of guest demands as taught in Martin in the context of sales forecasting in Sultan does not result in the automatic forecasting as recited in the amended independent claim 1 because of Sultan's failure to even recognize the issue of a missing forecast submission in the context of a hierarchical management structure. There is therefore no predictable result or reasonable expectation of success when the teachings of Sultan and Martin are combined as suggested by the Examiner.

From the foregoing discussion, Applicants assert that the amended independent claim 1, as a whole, is not rendered obvious under 35 U.S.C. §103(a) by the combination of Sultan and Gozdeck, notwithstanding the Official Notice taken of facts in the Office Action without proper contextual support. Dependent claims 2-3, 5-8, and 34 are also patentable over Sultan and Gozdeck at least based on their dependence on the allowable independent claim 1. The other independent claims 14, 17, and 30 have been amended to contain at least the limitations similar to those recited above with respect to claim 1. Therefore, the arguments in favor of patentability of claim 1 over the combination of Sultan and Gozdeck (in view of Examiner's Official notice) equally apply to the patentability of amended independent claims 14, 17, and 30 under 35 U.S.C. §103(a). Hence, their corresponding dependent claims 16 and 35 (claim 14); 18-19, 21-24, and 36 (claim 17); and 32, 37 (claim 30) are also allowable over the combination of Sultan and Gozdeck at least based on their dependence on the allowable independent claims 14, 17, and 30. Therefore, reconsideration and allowance of claims 1-3, 5-8, 14, 16-19, 21-24, 30, 32, and 34-37 is respectfully requested.

Miscellaneous Comments

Claims 2 and 18 have been amended simply to remove the subject matter that is already recited in their corresponding independent claims under present claim amendments. As before, Applicants assert that no new subject matter is added to the specification through the present claim amendments.

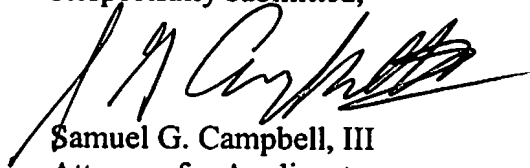
Applicants further assert that Applicants' act of responding to this Office Action should not be construed as Applicants' agreement with the Examiner's proffered reasons for rejecting the pending claims. The claims have been amended herein just to expedite the prosecution of the present application without protracted arguments and further delay. Even though the Applicants have clearly distinguished the currently amended set of claims from teachings in Sultan and Gozdeck, Applicants do not waive their right to provide additional arguments in support of patentability of pending claims when necessary.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. G. Campbell, III', with a long horizontal flourish extending to the right.

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